



CONSUMER PRODUCT SAFETY COMMISSION

(CPSC Docket No. 13-C0006)

Ross Stores, Inc. et al., Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission

ACTION: Notice

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the Federal Register in accordance with the terms of 16 C.F.R. § 1118.20(e). Published below is a provisionally-accepted Settlement Agreement with Ross Stores, Inc. et al., containing a civil penalty of \$3,900,000.00, within twenty (20) days of service of the Commission's final Order accepting the Settlement Agreement.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by (insert date that is 15 calendar days from publication date).

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 13-C0006, Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Room 820, Bethesda, Maryland 20814-4408.

FOR FURTHER INFORMATION CONTACT: Mary B. Murphy, Assistant General Counsel,
Office of the General Counsel, Consumer Product Safety Commission, 4330 East West
Highway, Bethesda, Maryland 20814-4408; telephone (301) 504-7809. SUPPLEMENTARY
INFORMATION: The text of the Agreement and Order appears below.

June 21, 2013

(Date)

Todd A. Stevenson

Secretary

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

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Ross Stores, Inc., et al.)	CPSC Docket No. <u>13-C0006</u>
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SETTLEMENT AGREEMENT

In accordance with the Consumer Product Safety Act, 15 U.S.C. §§ 2051–2089 (CPSA), and 16 C.F.R. § 1118.20, Ross Stores, Inc., Ross Procurement, Inc., Ross Merchandising, Inc., and Ross Dress for Less (Ross), and the U.S. Consumer Product Safety Commission (Commission), through its staff (Staff), hereby enter into this Settlement Agreement (Agreement). The Agreement and the incorporated attached Order (Order) resolve staff’s charges set forth below.

PARTIES

The Commission is an independent federal regulatory agency, established pursuant to, and responsible for, the enforcement of the Consumer Product Safety Act, (CPSA), 15 U.S.C. §§ 2051–2089. By executing this Agreement, staff is acting on behalf of the Commission, pursuant to 16 C.F.R. §1118.20(b). The Commission issues the Order under the provisions of the CPSA.

Ross is a corporation, organized and existing under the laws of Delaware, with its principal place of business at 4440 Rosewood Drive, Pleasanton, CA 94588.

STAFF CHARGES

On multiple occasions, and during various periods from January 2009 to February 2012, Ross sold and/or held for sale, 12 series of various styles, models, and quantities of children’s upper outerwear products with drawstrings at the neck and/or waist, for a total of approximately 23,000 garments, including, but not limited to, the following: Children’s Apparel Network, Ltd.

(Children’s Apparel) Young Hearts hooded sweater; Byer California (Byer) Girls cargo pocket jacket with neck and waist drawstring; Puma North America Inc. (Puma) USA V-Kon training jacket with waist drawstrings; LA Fashion Hub, Inc., jacket with neck drawstring; LA Fashion jacket with neck drawstrings; Umbro International, Ltd., jacket with waist drawstrings; Hot Chocolate Athletic set jacket with waist drawstrings; Bonded Apparel hooded fleece jacket with neck drawstrings; Me Jane/Louise Paris Ltd., fur hood fleece with waist drawstring; MeJane Louise Paris, Ltd., fur hood bubble jacket with waist drawstrings; LANY Group LLC terry hooded sweatshirt with neck drawstring; and YMI Jeanswear hooded sweatshirt with neck drawstrings. The products identified in this paragraph are collectively referred to as “Garments.”

Ross sold the Garments to consumers, and/or held the Garments for sale with the intent to ultimately sell to consumers.

The Garments are “consumer product[s],” and at all relevant times, Ross was a “retailer” of those consumer products, which were “distributed in commerce,” as those terms are defined in CPSA sections 3(a)(5), (8), and (13), 15 U.S.C. § 2052(a)(5), (8), and (13).

In February 1996, staff issued the Guidelines for Drawstrings on Children’s Upper Outerwear (Guidelines) to help prevent children from strangling or entangling on neck and waist drawstrings. The Guidelines state that drawstrings can cause, and have caused, injuries and deaths when they catch on items, such as playground equipment, bus doors, or cribs. In the Guidelines, staff recommends that no children’s upper outerwear in sizes 2T to 12 be manufactured or sold to consumers with hood and neck drawstrings.

In June 1997, ASTM adopted a voluntary standard (ASTM F1816-97) incorporating the Guidelines. The Guidelines state that firms should be aware of the hazards associated with drawstrings and should ensure that garments they sell conform to the voluntary standard.

On May 19, 2006, the Commission posted on its website a letter from the Commission's Director of the Office of Compliance to manufacturers, importers, and retailers of children's upper outerwear. The letter urges them to make certain that all children's upper outerwear sold in the United States complies with ASTM F1816-97. The letter also states that staff considers children's upper outerwear with drawstrings at the hood or neck area to be defective and to present a substantial risk of injury to young children under Federal Hazardous Substances Act (FHSA), section 15(c), 15 U.S.C. § 1274(c). The letter also references the CPSA's section 15(b) (15 U.S.C. § 2064(b)) reporting requirements.

In September 2009, Ross paid a civil penalty in the amount of \$500,000 to settle staff charges that the Firm failed to report four children's upper outerwear products that it distributed in commerce during various periods in 2006, 2007, and 2008. Throughout the course of that civil penalty matter, Ross received repeated reminders about the drawstring hazards and applicable law.

On July 19, 2011, the Commission published in the *Federal Register* a Final Rule that designates the hazards presented by drawstrings in children's upper outerwear as substantial product hazards. The Final Rule, which became effective on August 18, 2011, provides that “[c]hildren’s upper outerwear in sizes 2T to 16 or the equivalent, and having one or more drawstrings, that is subject to, but not in conformance with, the requirements of” the ASTM Standard, shall be deemed to be a substantial product hazard under CPSA section 15(a)(2). 16 C.F.R. §1120.3(b)(1).

Staff provided Ross with multiple direct notifications of the hazards associated with drawstrings on children's upper outerwear.

Ross's distribution in commerce of the Garments did not comply with the 1996 staff Guidelines, ASTM F1816-97, staff's May 2006 defect notice, or the Final Rule, and posed strangulation hazards to children.

Ross's distribution of two series of the Garments (Children's Apparel and Byer) occurred in part, during the same period of time as the investigation and negotiation of Ross's 2009 civil penalty matter. Ross's distribution of four of the remaining 10 series of violations occurred partially after the effective date of the Final Rule; the other six series were distributed entirely after the effective date of the Final Rule.

Ross has informed the Commission that there have been no reported incidents or injuries associated with the Garments.

The Commission, in cooperation with Ross and/or other firms that manufactured, imported, or distributed the Garments announced recalls of the Garments.

Based in part on information available through the sources set forth in paragraphs 7 through 11, Ross had presumed and actual knowledge that the Garments distributed in commerce posed strangulation hazards and presented substantial risks of injury to children under FHSA section 15(c)(1), 15 U.S.C. § 1274(c)(1). Ross obtained information that reasonably supported the conclusion that the Garments contained defects that could create substantial product hazards or that the Garments created unreasonable risks of serious injury or death. Pursuant to CPSA sections 15(b)(3) and (4), 15 U.S.C. § 2064(b)(3) and (4), Ross was required to inform the Commission immediately of these defects and risks.

Ross knowingly and repeatedly failed to immediately inform the Commission about the Garments, as required by CPSA sections 15(b)(3) and (4), 15 U.S.C. § 2064(b)(3) and (4), and as the term "knowingly" is defined in CPSA section 20(d), 15 U.S.C. § 2069(d). These knowing

failures violated CPSA section 19(a)(4), 15 U.S.C. § 2068(a)(4). Pursuant to CPSA section 20, 15 U.S.C. § 2069, these knowing failures subjected Ross to civil penalties.

ROSS'S RESPONSE

Ross denies Staff's charges above, including but not limited to any claim that Ross failed to timely report to the Commission the sale or distribution of any children's upper outerwear products with drawstrings pursuant to § 15(b) of the CPSA.

Ross enters into this Agreement to settle this matter without the expense of litigation.

Ross enters into this Agreement and agrees to pay the amount referenced below in compromise of staff's charges. Ross's entering into this Agreement is not an admission of liability of any kind, whether legal or factual.

Ross does not manufacture the products it offers for sale in its stores. It purchases a wide variety of products, including children's apparel, from thousands of vendors and other suppliers. Ross distribution centers and warehouses processed approximately 57 million units of children's apparel in 2011, and approximately 1.4 million of those units were children's outerwear. Consistent with practice in the retail industry, Ross contractually requires its vendors to supply products that comply with all federal, state, and local laws, regulations, and standards, and relies on its suppliers to provide compliant products. Notwithstanding this reliance, Ross has implemented policies and practices to preclude such garments being purchased by Ross, held in inventory, or sold in interstate commerce. Since the Commission first issued the Guidelines in 1996, Ross's children's apparel purchasing policy has prohibited Ross's apparel buyers from purchasing children's upper outerwear with drawstrings. Prior to 2009, Ross's management had procedures in place that it reasonably believed prevented Ross's purchase of children's upper outerwear products with drawstrings.

Ross first learned that it had sold the Children's Apparel and Byer Garments upon receiving notice of the fact that they were being recalled by the vendors in March and April 2010. Prior to that time, Ross's compliance and safety personnel and children's apparel buyers had no knowledge, whether actual or constructive, that the Garments actually supplied by Children's Apparel and Byer contained drawstrings. Ross did not file a report pursuant to §

15(b) of the CPSA because it believed that the Commission was adequately informed of the alleged defect, due to the Commission's involvement in the recall of these Garments.

Subsequent to the Children's Apparel and Byer recalls, and in response to staff's investigation regarding those Garments, Ross undertook an extensive, and voluntary, manual audit of all children's upper outerwear in all of its stores and distribution centers in the fall and winter of 2011, to determine whether it had unintentionally purchased other products subject to the Final Rule. This voluntary audit required Ross's personnel in all of its approximately 1,125 stores, as well as its warehouses, to visually inspect all items of children's apparel then in inventory, to determine whether certain items failed to comply. The audit identified 10 of the 12 series of Garments, accounting for more than 19,000 of the approximately 23,000 Garments, which Ross reported to the CPSC.

Prior to the audit, Ross's product compliance and safety personnel and children's apparel buyers had no knowledge, whether actual or constructive, that the Garments discovered in the audit actually supplied by Ross's suppliers contained drawstrings. Ross promptly notified the Commission pursuant to § 15(b) of the CPSA upon discovering as a result of the audit that it had purchased and sold many of the Garments, as well as a number of other children's upper outerwear products that appeared to contain drawstrings, but which Staff determined were not subject to the Guidelines.

Upon learning in 2009 that, despite the procedures it had in place, the Children's Apparel and Byer Garments had been discovered in Ross's stores, Ross began developing new compliance measures to augment its existing policies, including a product recall inventory and sales tracking system, the creation of a dedicated product safety personnel position to address product safety compliance, training, and policy issues, increased training of personnel who order

children's apparel for sale in Ross's stores and process children's apparel in its distribution centers, an enhanced distribution center review process, in which children's outerwear is audited for compliance with the Final Rule prior to distribution to stores, and a point-of-sale register lock system that prohibits the sale of recalled products. These compliance measures were implemented and refined through 2012 and will continue to be evaluated and modified, as appropriate.

Ross is unaware of any incidents or injuries associated with the Garments.

AGREEMENT OF THE PARTIES

Under the CPSA, the Commission has jurisdiction over the matter involving the Garments and over Ross.

The parties enter into the Agreement for settlement purposes only. The Agreement does not constitute an admission by Ross, or a determination by the Commission, that Ross knowingly violated the CPSA.

In settlement of staff's charges, and to avoid the cost, distraction, delay, uncertainty, and inconvenience of protracted litigation or other proceedings, Ross shall pay a civil penalty in the amount of three million nine hundred thousand dollars (\$3,900,000.00). The civil penalty shall be paid within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement. The payment shall be made by electronic wire transfer via www.pay.gov.

Following staff's receipt of this Agreement executed on behalf of Ross, staff shall promptly submit the Agreement to the Commission for provisional acceptance. Promptly following provisional acceptance of the Agreement by the Commission, the Agreement shall be placed on the public record and published in the *Federal Register*, in accordance with the procedures set forth in 16 C.F.R. § 1118.20(e). If within fifteen (15) calendar days the

Commission does not receive any written request not to accept the Agreement, the Agreement shall be deemed finally accepted on the sixteenth (16th) calendar day after the date the Agreement is published in the *Federal Register*, in accordance with 16 C.F.R. § 1118.20(f).

This Agreement is conditioned upon, and subject to, the Commission's final acceptance, as set forth above, and is subject to the provisions of 16 C.F.R. § 1118.20(h). Upon the later of: (i) the Commission's final acceptance of this Agreement and service of the accepted Agreement upon Ross; and (ii) the date of issuance of the final Order, this Agreement shall be in full force and effect and shall be binding upon the parties.

Effective upon the later of: (i) the Commission's final acceptance of the Agreement and service of the accepted Agreement upon Ross; and (ii) the date of issuance of the final Order, for good and valuable consideration, Ross hereby expressly and irrevocably waives and agrees not to assert any past, present, or future rights to the following, in connection with the matter described in this Agreement: (1) an administrative or judicial hearing; (2) judicial review or other challenge or contest of the validity of the Order or of the Commission's actions; (3) a determination by the Commission of whether Ross failed to comply with the CPSA and its underlying regulations; (4) a statement of findings of fact and conclusions of law; and (5) any claims under the Equal Access to Justice Act.

Ross represents and agrees that it has implemented and will maintain a compliance program designed to assure compliance with the Final Rule and CPSA § 15(b). In addition to the program components set out in paragraph 25 of this Agreement, Ross represents that the ongoing compliance program contains (i) written standards and policies; (ii) a mechanism for confidential employee reporting of compliance-related questions or concerns to either a compliance officer or to another senior manager with authority to act as necessary; (iii)

appropriate communication of company compliance-related policies and procedures regarding the Final Rule and CPSA § 15(b) to all applicable employees through training programs, or otherwise; (iv) management oversight of compliance and appropriate personnel responsibility for implementing compliance; and (v) a policy to retain all compliance-related records for at least five (5) years and availability of such records to Commission staff, upon reasonable request.

Ross represents and agrees that it has designed and implemented internal controls and procedures that are designed to assure that (i) all reporting made to the Commission is timely, truthful, complete, accurate and in accordance with applicable law; and (ii) prompt disclosure is made to Ross's management of any significant deficiencies or material weaknesses in the design or operation of such internal controls that are reasonably likely to adversely affect in any material respect Ross's ability to record, process and report to the Commission in accordance with applicable law.

Upon reasonable request of staff, Ross shall provide written documentation of its procedures, including, but not limited to, the effective dates of its procedures and improvements thereto, and shall cooperate fully and truthfully with staff and shall, upon reasonable notice, make available all non-privileged information and materials, and personnel with direct involvement in such procedures, if reasonably requested by staff in relation to an investigation of noncompliance by Ross with the Final Rule and/or CPSA § 15(b).

The parties acknowledge and agree that the Commission may publicize the terms of the Agreement and the Order in a press release or other public notice (including but not limited to social media, such as Twitter and Facebook), the content of which shall substantially conform to the terms of this Settlement Agreement and any CPSC press releases previously issued in connection with the recalls of the Garments.

Ross represents that the Agreement: (i) is freely and voluntarily entered into, without any degree of duress or compulsions whatsoever; (ii) has been duly authorized, and (iii) constitutes the valid and binding obligation of Ross, enforceable against Ross in accordance with its terms. The individuals signing the Agreement on behalf of Ross represent and warrant that they are duly authorized by Ross, including Ross Stores, Inc., Ross Procurement, Inc., Ross Merchandising, Inc., and Ross Dress for Less, to execute the Agreement.

The Commission signatories represent that they are signing the Agreement in their official capacities and that they are authorized to execute this Agreement.

The Agreement is governed by the laws of the United States.

The Agreement and the Order shall apply to, and be binding upon, Ross and each of its officers, agents, servants, employees, and attorneys; successors, transferees, and assigns, and a violation of the Agreement or Order may subject Ross, and each of its officers, agents, servants, employees, and attorneys; successors, transferees, and assigns to appropriate legal action.

The Agreement and Order constitute the complete agreement between the parties on the subject matter contained therein.

The Agreement may be used in interpreting the Order. Understandings, agreements, representations, or interpretations apart from those contained in the Agreement and the Order may not be used to vary or contradict their terms. For purposes of construction, the Agreement shall be deemed to have been drafted by both of the parties and shall not, therefore, be construed against any party for that reason in any subsequent dispute.

The Agreement shall not be waived, amended, modified, or otherwise altered, except as in accordance with the provisions of 16 C.F.R. §1118.20(h). The Agreement may be executed in counterparts.

If any provision of the Agreement or the Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Agreement and the Order, such provision shall be fully severable. The balance of the Agreement and the Order shall remain in full force and effect, unless the Commission and Ross agree in writing that severing the provision materially affects the purpose of the Agreement and the Order.

Ross Stores, Inc.

Dated: 6/7/13

By: _____
Michael O'Sullivan
President and Chief Operating Officer
Ross Stores, Inc.

Dated: 6/10/13

By: _____
Jeffrey B. Margulies, Esq.
William L. Troutman, Esq.
Fulbright & Jaworski L.L.P.
555 South Flower Street, 41st Floor
Los Angeles, CA 90071

Counsel - Ross Stores, Inc.

U.S. CONSUMER PRODUCT SAFETY
COMMISSION STAFF

Stephanie Tsacoumis
General Counsel

Dated: 6/12/13

By: _____
Mary B. Murphy
Assistant General Counsel
Office of the General Counsel

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

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In the Matter of)	
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Ross Stores, Inc., et al.)	CPSC Docket No. <u>13-C0006</u>
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ORDER

Upon consideration of the Settlement Agreement entered into among Ross Stores, Inc., Ross Procurement, Inc., Ross Merchandising, Inc. and Ross Dress for Less (Ross), and the U.S. Consumer Product Safety Commission (Commission), and the Commission having jurisdiction over the subject matter and over Ross, and it appearing that the Settlement Agreement and the Order are in the public interest, it is:

ORDERED, that the Settlement Agreement be, and hereby is, accepted; and it is

FURTHER ORDERED, that Ross shall comply with the terms of the Settlement Agreement and shall pay a civil penalty in the amount of three million nine hundred thousand dollars (\$3,900,000.00) within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement. The payment shall be made by electronic wire transfer to the Commission via: www.pay.gov. Upon the failure of Ross to make the foregoing payment when due, interest on the unpaid amount shall accrue and be paid by Ross at the federal legal rate of

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interest set forth at 28 U.S.C. § 1961(a) and (b). If Ross fails to make such payment, or to comply in full with any other provision as set forth in the Settlement Agreement, such conduct will be considered a violation of the Settlement Agreement and Order.

Provisionally accepted and provisional Order issued on the 21st day of June, 2013.

BY ORDER OF THE COMMISSION:

Todd A. Stevenson, Secretary
U.S. Consumer Product Safety Commission

[FR Doc. 2013-15258 Filed 06/25/2013 at 8:45 am; Publication Date: 06/26/2013]